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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/584,686

06/28/2006

Peter Mahr

PD040005

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24498

7590

09/12/2008

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EXAMINER

AGUSTIN, PETER VINCENT

ART UNIT

PAPER NUMBER

2627

MAIL DATE

DELIVERY MODE

09/12/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/584,686

Applicant(s)

MAHR ET AL.

Examiner

Peter Vincent Agustin

Art Unit

2627

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 1-9 and 12.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: 13.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see item 3 above.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Joseph H. Feild/
Supervisory Patent Examiner, Art Unit 2627

Continuation of 3. NOTE:

The previous version of claim 1 recites that the type of the abnormal region is determined "based on the measured radial extension", while the currently amended version recites "determining the type of the abnormal region based on the information obtained during the jump". Therefore, this amendment significantly changes the scope of claim 1, and would require further consideration and search by the examiner.

Furthermore, applicant's arguments filed on August 27, 2008 have been fully considered but they are not found persuasive:

(a) The applicant argues on page 6, paragraph 3 that Kühn fails to disclose "making a jump over the abnormal region perpendicular to the track direction". The examiner disagrees. The applicant is first directed to the recitations in claim 1, i.e., "making a jump over the abnormal region perpendicular to the track direction", "obtaining information on the type of abnormal region during the jump", and "determining the type of the abnormal region based on the information obtained during the jump". As noted in the rejections, the claimed "obtaining information on the type of abnormal region" corresponds to Kühn et al.'s teaching in column 6, lines 54-55: "distinction between errors caused by fingerprints, scratches and black dots", more specifically, in column 6, lines 55-61: "It has become apparent that the reparable cause of error fingerprint is present as a first type of error FA1 when more than three error bursts h appear in five neighboring tracks k. On the other hand, scratches and black dots as second type of error FA2 are identified by the appearance of up to three error bursts h in three neighboring tracks k." Kühn et al.'s teaching of "three error bursts", "three neighboring tracks", and "five neighboring tracks" clearly suggests an inherent mechanism for counting these error bursts and counting the adjacent neighboring tracks. In order to count the number of "error bursts" and the extent of the "neighboring tracks", it is necessary for an optical head to "jump over the abnormal region".

(b) In response to applicant's arguments on page 6, last paragraph that the applicant's invention "has the advantage that a valid track is found soon without scanning the whole invalid tracks", and "according to the invention of the applicant, a jump is made perpendicular to the erroneous track until a valid track region is found and guidance on this track can be maintained": (1) these are not recited in the claims; and (2) according to claim 1 itself, the type of abnormal region is obtained "during the jump".

(c) The applicant argues that "Kühn does not determine the radial extension of the abnormal region perpendicular to a track direction". The examiner disagrees. Column 6, lines 55-61 teach that the errors are categorized as "scratches and black dots" when "up to three error bursts h in three neighboring tracks k." while the errors are categorized as "fingerprints" when "more than three error bursts h appear in five neighboring tracks k". Therefore, the reference clearly teaches determining the "radial extension" of the abnormal region.

(d) In response to applicant's argument on page 8 that the Mitarai reference fails to teach "making a jump over the abnormal region perpendicular to the track direction", it should be noted that the Kühn et al. reference is relied upon for these limitations, see item (a) above.